

***STATE OF CALIFORNIA***

**DEPARTMENT OF INSURANCE**

**In the Matter of:** Proposed adoption of the Insurance Commissioner's regulations pertaining to pure premium rates for workers' compensation insurance, the Experience Rating Plan and the Uniform Statistical Reporting Plan to be effective on January 1, 2005.

FILE NUMBER RH-04039178

**DECISION**

My first pure premium rate Decision of this term of office, effective on July 1, 2003, was an alarming document. I had to adopt an increase of 7.2%, following double digit increases adopted by the two previous insurance commissioners, and warned that increases were certain to occur in the future and would lead to the meltdown of the workers' compensation system in California. I also warned that the financial condition of the State Compensation Insurance Fund was weak and I called for immediate, quantifiable, real legislation that would contain the cost drivers in the system.

The Legislature heeded my call and took up the cause of workers' compensation reform in 2003, passing sweeping changes that stopped the upward trend in underlying system costs and put us on track for substantial decreases in rates. Further reform legislation was enacted this year.

However, despite the success so far of some of the reforms in reducing costs, we cannot assume that nothing more needs to be done to achieve necessary savings. Laws don't enforce themselves; they must be implemented by administrative agencies whose ability to make policy decisions is limited. When the law itself is extremely vague, implementation becomes difficult and the potential of litigation that will delay implementation becomes a very real possibility. The 2004 reforms embodied in SB 899 need to be clarified and this should be done by the Legislature and Governor soon, rather than by the courts over the next decade.

The pure premium rate approval process for California workers' compensation insurance is not well understood. Insurance law requires that the licensed rating organization analyze past cost trends and report to the Insurance Commissioner its advice on the pure premium rates necessary to pay for the anticipated claims that will occur in the next year. The commissioner is required to conduct a hearing on the proposed rate increase and then render a decision on the proposal. This decision then becomes an advisory rate increase or decrease for the workers' compensation insurance industry. Therefore, in accordance with the law and on the advice of my staff, including two Department actuaries, I have reduced the WCIRB's proposed advisory pure

premium rate from an increase of 3.5% to a decrease of 2.2% for workers' compensation insurance policies incepting on or after January 1, 2005.

This is the third decrease in a row. On January 1, 2004, I reduced the pure premium rates for California workers' compensation by 14.9%. On July 1, 2004, I reduced the rate by another 7%. The total effect of the three decreases (-14.9 on January 1, 2004; -7% on July 2, 2004; and now -2.2%) is 22.6% from the July 2003 pure premiums. These reductions should affect all policies incepting on or after the effective date of the Decision. But many insured employers have not had their rates decreased by very much, if at all. In some cases there have even been increased premiums.

Just as the reforms themselves are not self-executing, the reform savings are not automatic. Workers' compensation insurance companies are not required by law to pass on the savings. The Insurance Commissioner does not set the workers' compensation rates; insurance companies are allowed by law to set any adequate rate they desire. But insurers must understand that the Legislature, two governors, the Department of Insurance, and thousands of citizens worked very hard to make the reforms happen in order to relieve an intolerable burden on employers and California's economy, not to benefit the insurance industry. I have opposed rate regulation because I have felt that it is better to let market forces work. However, the patience of employers and policymakers in Sacramento is not without limit. If the real substantial reform savings are not passed through to policyholders by insurers voluntarily, there will be powerful calls for a mandatory transfer of those savings.

We have achieved much in the past two years. But we haven't finished the task. The reform legislation must be cleaned up and the current reform savings must be passed through to employers. Only when that is done will we be able to be confident that workers' compensation in California will be healthy for the foreseeable future.

I hereby adopt the attached Proposed Decision and Proposed Order of Hearing Officer Larry C. White as my Decision in the above-entitled matter.

IT IS SO ORDERED THIS 17<sup>th</sup> DAY OF NOVEMBER, 2004

  
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JOHN GARAMENDI  
Insurance Commissioner